

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 RICHARD PETER DeARMENT,
12
13 vs. Petitioner,
14 MICHAEL MARTEL, Warden,
15 Respondent.
16

CASE NO. 10CV1717-LAB (CAB)
**ORDER ADOPTING REPORT
AND RECOMMENDATION**

17 DeArment filed a habeas petition on August 13, 2010 challenging his conviction in
18 San Diego County Superior Court of lewd and lascivious conduct upon children. The petition
19 was referred to Magistrate Judge Bencivengo for a report and recommendation. Judge
20 Bencivengo issued a thorough and well-reasoned R&R on October 24, 2011 recommending
21 that DeArment's petition be denied in its entirety. This Order **ADOPTS** that
22 recommendation.

23 This Court has jurisdiction to review the R&R pursuant to Rule 72 of the Federal Rules
24 of Civil Procedure. "The district judge must determine de novo any part of the magistrate
25 judge's disposition that has been properly objected to. The district court may accept, reject,
26 or modify the recommended disposition; receive further evidence; or return the matter to the
27 magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). The district judge "must
28 review the magistrate judge's findings and recommendations de novo *if objection is made*,

1 but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en
2 banc).

3 Because DeArment is a prisoner and is proceeding pro se, the Court construes his
4 pleadings liberally and affords him the benefit of any doubt. See *Karim-Panahi v. L.A. Police*
5 *Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). That said, “[p]ro se litigants must follow the same
6 rules of procedure that govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
7 1987). That includes opposing Judge Bencivengo’s R&R, which DeArment failed to do by
8 the date allowed (November 23, 2011) even though he was warned that “failure to file
9 objections within the specified time may waive the right to raise those objections on appeal.”
10 (R&R at 37.)

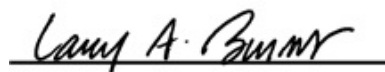
11 DeArment’s petition asserts five claims (R&R at 2), each of which Judge Bencivengo’s
12 R&R considers in substantial depth and finds inadequate. DeArment’s failure to oppose the
13 R&R lends gravity to Judge Bencivengo’s conclusions, which the Court has carefully
14 reviewed and here affirms.

15 **III. Conclusion**

16 The Court **ADOPTS** the R&R and **DENIES** DeArment’s petition in its entirety.
17 Because DeArment hasn’t made a “substantial showing of the denial of a constitutional
18 right,” a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c)(2); see also *Miller-El v.*
19 *Cockrell*, 537 U.S. 322, 327 (2003) (articulating standard for issuance of a certificate of
20 appealability).

21 **IT IS SO ORDERED.**

22 DATED: December 7, 2011

23 

24 **HONORABLE LARRY ALAN BURNS**
25 United States District Judge
26
27
28